

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** Ordinance amending City Code Title 11, Chapter 4 and City Code Title 8, Chapter 3, Article C, addressing construction of development-related public improvements prior to plat recordation.

**SUMMARY:** Consider approving an ordinance amending provisions of Title 11, "Land Disturbance" and Title 8, Chapter 4, Article C Public Improvement Construction as a Condition of Development."

**FISCAL:**

**IMPACT:** None

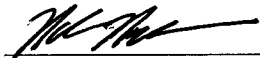
**STAFF RECOMMENDATION:**

Staff recommends that City Council approve an Ordinance amending provisions of Title 11, "Land Disturbance" and Title 8, Chapter 4, Article C, "Public Improvement Construction as a Condition of Development" of the West Jordan City Code.

**MOTION RECOMMENDED:**

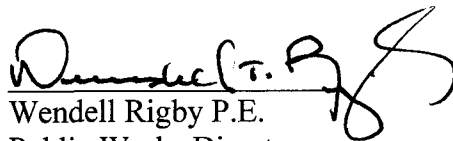
I move to approve Ordinance 14-07 amending City Code Title 11, Chapter 4 and City Code Title 8, Chapter 3, Article C.

**Prepared by:**



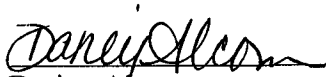
Nate Nelson  
City Engineer

**Reviewed by:**



Wendell Rigby P.E.  
Public Works Director

**Reviewed as to legal form:**



Darien Alcorn  
Deputy City Attorney

**Recommended by:**



Richard E. Davis  
City Manager

## **BACKGROUND DISCUSSION:**

### Meeting with Developers

In October, 2013, City staff met with developers to provide information about proposed revisions to the City's process for recording plats prior to or after construction of public improvements to serve the development. The City's process has been to enter into a contract with the developer providing, among other things, financial assurance of completion, then record the plat. Though the City Code already allowed a land disturbance permit to be issued prior to plat recordation, there was no detail related to how the City would accept any improvements that were installed under the land disturbance permit, or what financial assurance the City would require to ensure that the property would be revegetated and restored if the project did not continue to completion. Based on various sections of the Utah Code, draft revisions to the City Code were prepared and presented to developers in the October meeting. They were also provided the attached "Record First Process" and "Construction First Process" documents to summarize the intent of the revisions.

City staff received and incorporated one comment from the meeting. Initially, it was proposed by staff that the amount of financial assurance for revegetation and restoration be calculated as 15% of the estimated cost of the improvements proposed for installation under the land disturbance permit. A developer suggested that 10% would be more appropriate based on Utah Code Ann. §10-9a-604.5 (see discussion below).

### Legal Information

According to Utah Code Ann. §10-9a-103, "Improvement completion assurance" is the "security required by a municipality to guaranty the proper completion of landscaping or infrastructure that the land use authority has required as a condition precedent to . . . recording a subdivision plat; or [ ] beginning development activity." Utah Code Ann. §10-9a-103 (18).

"Improvement warranty" is the "unconditional warranty that the accepted landscaping or infrastructure . . . complies with the municipality's written standards for design, materials, and workmanship; and [ ] will not fail in any material respect, as a result of poor workmanship or materials, within the improvement warranty period." Utah Code Ann. §10-9a-103 (19).

The "Improvement warranty period" can be "no later than one year after a municipality's acceptance of required landscaping; or . . . no later than one year after a municipality's acceptance of required infrastructure," unless there is a finding for good cause that certain conditions are met to require a longer warranty period. Utah Code Ann. §10-9a-103 (20).

Title 8, Chapter 3, Article C of the City Code addresses public improvement construction as a condition of development and describes the warranty period and obligations during the warranty period that are regulated by the above-quoted provisions. Some revisions to the City Code are proposed to follow recent changes to the Utah Code. First, the City Code currently describes a "warranty and maintenance" period. Based on the definition of "improvement warranty" above, City staff is proposing to eliminate the "maintenance" provisions, and reference to maintenance in the City Code. Also, the City Code currently contains a landscaping warranty period that is two years instead of one. Based on the definition of "improvement warranty period" above, City staff is proposing to limit the landscaping warranty period to one year. In the event that City staff believes that any of the exceptions in the Utah Code apply, and it would be appropriate to require a longer warranty period, the project will be presented to City Council on an individual basis to create the required record of finding.

Utah Code Ann. §10-9a-604.5 states,

(2) (a) A land use authority shall require an applicant to complete a required landscaping or infrastructure improvement prior to any plat recordation or development activity.

(b) Subsection (2)(a) does not apply if:

(i) upon the applicant's request, the land use authority has authorized the applicant to post an improvement completion assurance in a manner that is consistent with local ordinance; and

(ii) the land use authority has established a system for the partial release of the improvement completion assurance as portions of required improvements are completed and accepted.

(3) At any time up to the land use authority's acceptance of a landscaping or infrastructure improvement, and for the duration of each improvement warranty period, the land use authority may require the developer to:

(a) execute an improvement warranty for the improvement warranty period; and

(b) post a cash deposit, surety bond, letter of credit, or other similar security, as required by the municipality, in the amount of up to 10% of the lesser of the:

(i) engineer's original estimated cost of completion; or

(ii) applicant's reasonable proven cost of completion.

Currently, the City Code does not require improvements to be completed prior to plat recordation or development activity but instead requires an improvement guarantee to be submitted. Staff is proposing updates to the City Code to require completion of improvements. At the developer's option, the developer may request to record a plat prior to construction of improvements. If so, the developer will need to enter into an improvement construction and assurance agreement with the City providing financial assurance of completion.

In order to accommodate construction prior to plat recordation, City staff is proposing to modify Title 11, Chapter 4, related to Land Disturbance bonds. The proposal is to require financial security for revegetation for a limited clearing and grubbing land disturbance permit, and financial security for revegetation and site restoration if the land disturbance permit is for more than clearing and grubbing.

The amount of the land disturbance financial security will be based on the estimated cost of revegetation plus restoration if applicable. However, if there is not a revegetation and restoration plan, the amount will be set at 10% of the estimated cost of all of the public improvements proposed with the development. The 10% coincides with Utah Code Ann. §10-9a-604.5 quoted above. Therefore, if improvements are accepted by the City prior to plat recordation, the amount of the financial security will stay the same.

# RECORD FIRST PROCESS

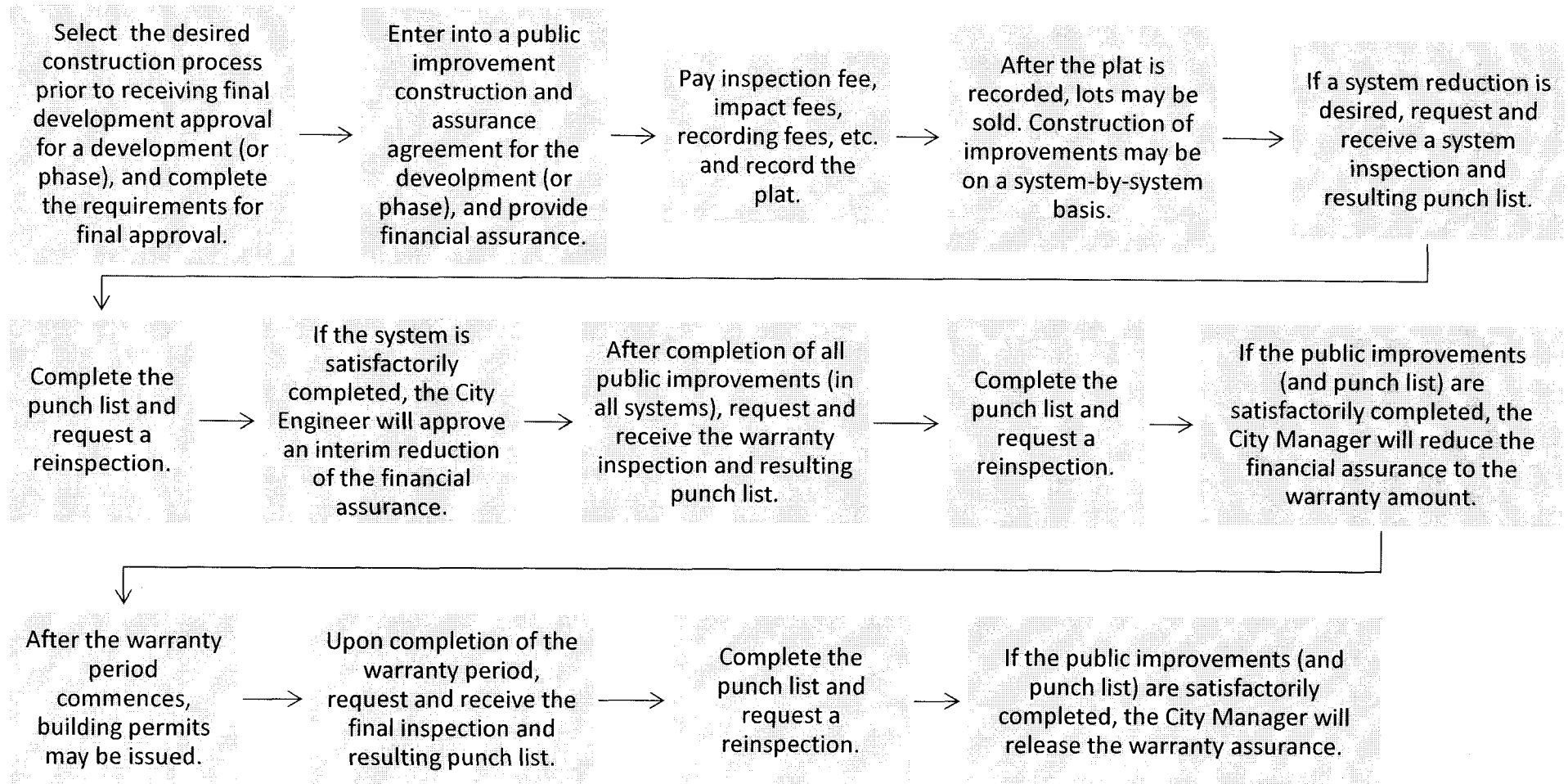


Figure 1



# CONSTRUCTION FIRST PROCESS

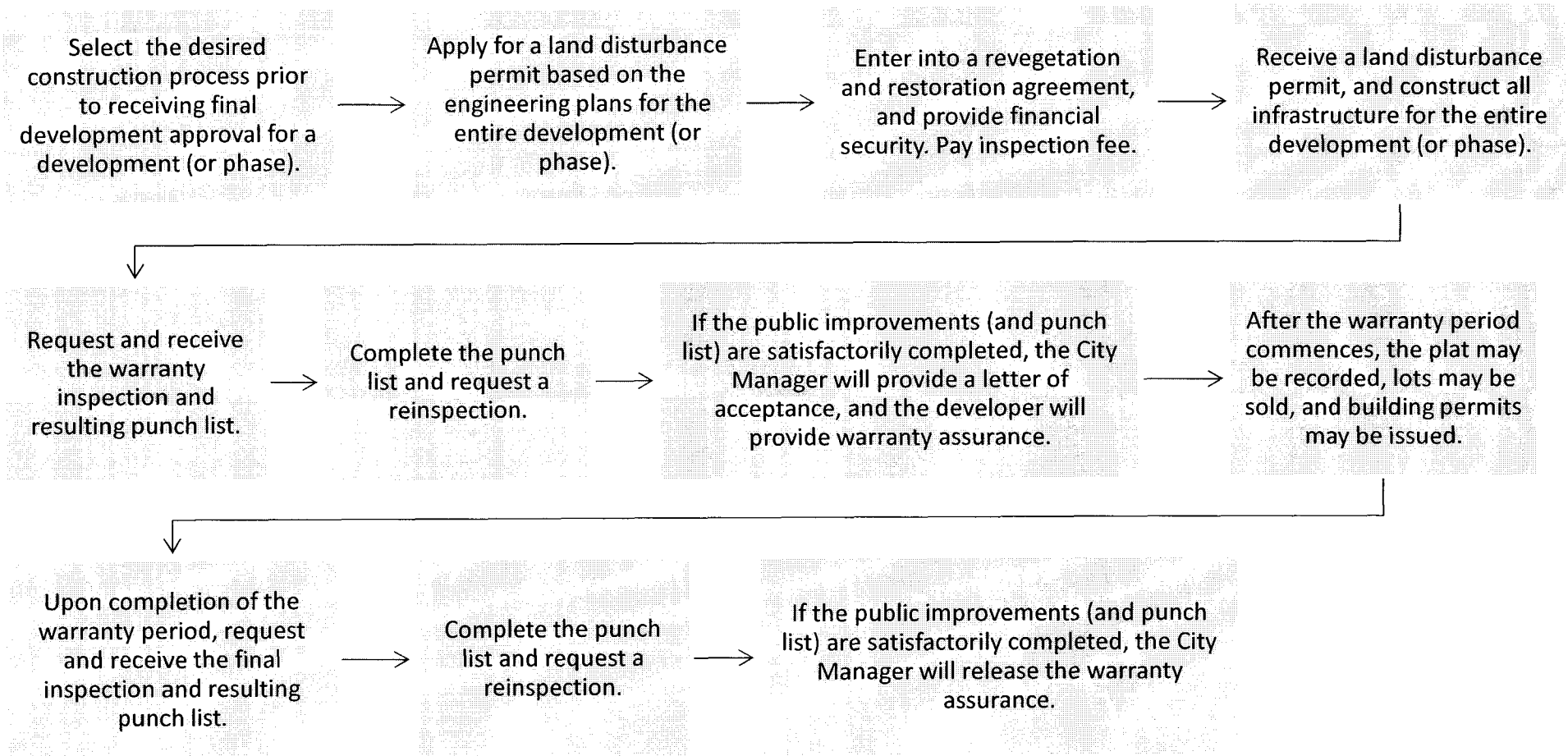


Figure 1

## THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

ORDINANCE NO. 14- 07

[LAND DISTURBANCE AND IMPROVEMENT ASSURANCE]

AN ORDINANCE AMENDING TITLE 8, "PUBLIC WORKS, PUBLIC WAYS  
AND PROPERTY"  
AND TITLE 11, "LAND DISTURBANCE."

WHEREAS, the City of West Jordan adopted a City Code in 2009, for the purpose of carrying into effect and discharging all powers and duties conferred by law upon the city and its officers, employees and inhabitants, and to provide for the safety, preserve the health, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the city and its inhabitants, and to protect property in the city; and

WHEREAS, the West Jordan City Council finds and determines that the purpose of the 2009 City Code, and the public health and welfare, will best be reached by the adoption of the following amendments to Title 8, Chapter 3 and Title 11, Chapter 4 of the 2009 City Code.

NOW THEREFORE, IT IS ORDAINED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH:

**Section 1.** Title 8, Chapter 3, Article C, Sections 1 through 14 of the 2009 City Code shall hereafter read as follows:

### ARTICLE C. IMPROVEMENT GUARANTEES

**8-3C-1: PURPOSE AND SCOPE:**

**8-3C-2: INSTALLATION OF PUBLIC AND NONPUBLIC IMPROVEMENTS  
REQUIRED AS A CONDITION OF DEVELOPMENT:**

**8-3C-3: ESTIMATED COST OF IMPROVEMENTS:**

**8-3C-4: AMOUNT OF FINANCIAL ASSURANCE:**

**8-3C-5: FORM OF FINANCIAL ASSURANCE:**

**8-3C-6: PUBLIC IMPROVEMENT ACCEPTANCE:**

**8-3C-7: SYSTEM REDUCTIONS OF FINANCIAL ASSURANCE:**

**8-3C-8: WARRANTY, REPAIR AND INDEMNIFICATION FOR IMPROVEMENTS:**

**8-3C-9: INSPECTIONS:**

**8-3C-10: WARRANTY ASSURANCE:**

**8-3C-11: FAILURE TO PERFORM:**

**8-3C-12: FINAL INSPECTION, RELEASE OF WARRANTY ASSURANCE:**

**8-3C-13: REPAIRS AND EMERGENCY REPAIRS:**

**8-3C-14: INADEQUATE PROCEEDS; COSTS:**

### **8-3C-1: PURPOSE AND SCOPE:**

The purpose and scope of this article is to provide for and govern construction and the form, amount and release of financial assurance for all public improvements, and all private streets, boundary fences, and nonpublic improvements which will be installed as a condition of development. As used in this article, "public improvements" shall mean all improvements which will be dedicated to the city or be installed in the public right of way. (2001 Code § 89-6-1201; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-2: INSTALLATION OF PUBLIC AND NONPUBLIC IMPROVEMENTS REQUIRED AS A CONDITION OF DEVELOPMENT:**

- A. Construction Required: Construction of all public improvements required as a condition of development shall be completed pursuant to a land disturbance permit issued under title 11 of the city code prior to plat recordation or building permit issuance. The developer shall warrant the public improvements according to the provisions of this article and provide financial assurance for the warranty. Unless otherwise expressly excepted by this article, no subdivision plat shall be recorded, no lots shall be sold, and no building permits shall be issued until construction of all public improvements is complete and public improvements have been accepted by the city.
- B. Financial Assurance in Lieu of Construction: At the developer's option, the subdivision plat may be recorded prior to construction of public improvements, provided that the city and developer enter into an improvement construction and assurance agreement providing financial assurance. The improvement construction and assurance agreement may authorize construction of public improvements to be completed within twenty four (24) months after the date of final plat recordation. The improvement construction and assurance agreement shall be in a form acceptable to the city, securing the satisfactory completion of all required public and nonpublic improvements and the warranty of all public improvements. After the effective date of the improvement construction and assurance agreement, the plat may be recorded and lots may be sold, but no building permits shall be issued until construction of all public improvements is complete and public improvements have been accepted by the city in accordance with this article.
- C. No Third Party Beneficiaries: The improvement construction and assurance agreement and associated financial assurance are for the sole benefit of the city and not for the individual benefit of any citizen or identifiable class of citizens, including, but not limited to, the purchasers of lots or building spaces within the development for which the improvement assurance is required. The improvement assurance is not for the purpose of ensuring that funds are available for the payment to material suppliers or labor suppliers, and no rights shall accrue to such suppliers. The fact that the improvement assurance has been required by the city shall not create any city obligation to third parties to: enforce its terms; install the improvements; or respond in damages for the nonenforcement of the improvement assurance or the noninstallation of the improvements. (2001 Code § 89-6-1202; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-3: ESTIMATED COST OF IMPROVEMENTS:**

- A. Estimated Cost Of Public Improvements, System Categories: Based on the approved engineering drawings, the city engineer shall calculate the estimated cost of public improvements. The estimated cost shall typically include, not by way of limitation, the following system categories:
1. Earthwork and erosion control;
  2. Culinary water;
  3. Sanitary sewer;
  4. Storm sewer;
  5. Street improvements, including, but not limited to, curb, gutter and sidewalk;
  6. Secondary and irrigation water;
  7. Public landscaping;
  8. Finish items related to the public improvements; and
  9. Other categories as approved by the city engineer.
- B. Estimated Cost Of Nonpublic Improvements: Where required, the city engineer shall also calculate the reasonable estimated cost of private streets, boundary fences and other nonpublic improvements to be installed as a condition of development. (2001 Code § 89-6-1203; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-4: AMOUNT OF FINANCIAL ASSURANCE:**

- A. Public Improvements Completion Assurance: If the developer desires to record the subdivision plat prior to city acceptance of all public improvements, the developer shall submit financial assurance in the amount of one hundred percent (100%) of the estimated cost of public improvements based on the approved engineering drawings. The estimated cost of public improvements and amount of the financial assurance will not take into consideration any portion of public improvements constructed prior to plat recordation.
- B. Nonpublic Improvements Completion Assurance: The amount of financial assurance for construction of nonpublic improvements shall be one hundred percent (100%) of the estimated cost of private streets, boundary fences, landscaping, common area and recreational facilities and amenities, and other nonpublic improvements to be installed as a condition of development.
- C. Warranty Assurance: The amount of financial assurance for warranty of public improvements shall be the lesser of the following: ten percent (10%) of the estimated cost of public improvements; or ten percent (10%) of the developer's reasonable proven cost of completion. (2001 Code § 89-6-1204; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-5: FORM OF FINANCIAL ASSURANCE:**

The city shall accept the following forms of financial assurance:

- A. An escrow account held by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. The city shall have immediate access to the proceeds, which shall be available to the city by presenting a site draft at an office located within fifty (50) miles of the city.
- B. An irrevocable standby letter of credit issued by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. The city shall have immediate access to the proceeds, which shall be available to the city by presenting a site draft at an office located within fifty (50) miles of the city.
- C. Cash or a cashier's check, for deposit with the city in its accounts. Interest, if any, earned by the city on the deposited sum shall be retained by the city as reimbursement and an offset for the cost of administering the improvement construction and assurance agreement and financial assurance. (2001 Code § 89-6-1205; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-6: PUBLIC IMPROVEMENT ACCEPTANCE:**

- A. Public Improvement Acceptance: City acceptance of public improvements shall occur only after the city engineer verifies all of the following: (a) all systems are constructed; (b) all corrections list items are complete; (c) all city inspections and re-inspections are complete, except the final inspection to occur at the end of the warranty period; (d) all public improvements are in compliance with city ordinances, standards, specifications and the approved engineering drawings; (e) a maintenance plan has been submitted to the city for public landscaping improvements; (f) as built drawings have been submitted to the city; (g) the developer has provided financial assurance for the warranty; and (h) the subdivision plat is recorded. Acceptance shall not be deemed to have occurred unless and until the plat has been recorded and the city manager has issued a validly executed letter of acceptance.
- B. Timing of City Inspection and Acceptance: After completing all systems, the developer shall submit a written request for the city to perform an inspection of the public improvements. Failure to request city inspections and re-inspections in writing shall delay the city's inspection and potential acceptance. The date of city acceptance shall be the later of: (1) the date on which the plat is recorded; or (2) the date on which the city manager signs the letter of acceptance.
- C. Temporary System Connections: Prior to city acceptance of public improvements, the city engineer may authorize temporary connection to the city's existing infrastructure for the purpose of testing and inspecting the public improvements. The connection shall not become permanent unless and until the date of city acceptance as defined in this article. At any time prior to city acceptance, including without limitation any time prior to plat recordation, the city engineer's authorization for temporary connection may be revoked if the city engineer determines that public improvements may not be timely completed or dedicated to the city. (Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-7: SYSTEM REDUCTIONS OF FINANCIAL ASSURANCE:**

- A. Applicability: This section shall only apply to public improvements that are subject to a public improvement construction and assurance agreement.
- B. System Reduction Request: For public improvements that are subject to a public improvement construction and assurance agreement, the developer may submit system inspection and reduction requests no more frequently than once every thirty (30) calendar days after completing a system or systems. One interim reduction may be requested for the public landscaping system if the public landscaping improvements are substantially complete and seasonal conditions prevent total completion, testing and inspection.
- C. Reduction Requirements and Amount:
  - 1. Except as otherwise allowed by this article for public landscaping improvements, the financial assurance may only be reduced upon satisfactory completion of an entire system, as determined by the city engineer. The amount of the reduction shall be determined by the city engineer and shall not exceed ninety percent (90%) of the initial assurance amount for the completed system.
  - 2. If seasonal weather conditions prevent the public landscaping improvements from being completed, tested and inspected, the financial assurance may be reduced upon substantial completion of the public landscaping system, as determined by the city engineer. To the extent reasonable practical, the completed portion of the public landscaping improvements must be inspected by the city and found by the city engineer to be in full compliance with city ordinances, standards and specifications, and the approved engineering drawings. The amount of the interim landscaping reduction shall be determined by the city engineer and shall not exceed seventy five percent (75%) of the initial assurance amount for the public landscaping system.
  - 3. No system reduction shall be authorized until such time as the city engineer has inspected the improvements and found them to be in full compliance with city ordinances, standards and specifications, and the approved engineering drawings. All reductions shall be by written authorization of the city engineer.
  - 4. A system reduction shall not constitute city acceptance of any system or any portion of the public improvements. City acceptance shall only be by the letter of acceptance issued in accordance with this article. The warranty period will not commence until after city acceptance. (2001 Code § 89-6-1206; amd. Ord. 13-03, 2-13-2013; 2009 Code § 8-3C-6, Ord. 14-\_\_\_, 03-12-2014)

### **8-3C-8: WARRANTY, REPAIR AND INDEMNIFICATION FOR IMPROVEMENTS:**

- A. Indemnification: A developer who enters into an improvement construction and assurance agreement, shall agree to indemnify, defend and hold the city harmless from any and all liability that may arise as a result of the public improvements until the city's acceptance.

B. Warranty Period, Repairs And Maintenance:

1. The warranty period shall be a minimum of twelve (12) months.
2. The warranty period may be longer if the city:
  - a. Determines for good cause that a one-year period would be inadequate to protect the public health, safety and welfare; and
  - b. Has substantial evidence on record:
    - (1) Of prior poor performance of the applicant; or
    - (2) That the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.
3. The warranty period will begin on the date of city acceptance as defined in this article.
4. During the warranty period the developer shall unconditionally warrant that the public improvements comply with the city's written standards for design, materials and workmanship and will not fail in any material respect as a result of poor workmanship or materials.
5. Prior to commencing the warranty period, the developer shall submit to the city a maintenance plan for public landscaping. During the warranty period, the city shall provide maintenance of accepted public improvements and follow the public landscaping maintenance plan. Landscaping failure within the warranty period shall be presumed to be due to defective materials or workmanship if the city certifies that the city, or its contractor, substantially followed the maintenance plan.
6. Regardless of cause, repair work shall be the responsibility of the developer until the date on which the warranty and maintenance period begins.
7. The warranty provisions of this chapter shall not apply to nonpublic improvements.

C. Issuance of Building Permits. Except as specifically set forth by written agreement entered into prior to issuance, no building permit shall be issued for construction within a development or subdivision until the day after the date of city acceptance as defined in this article. (2001 Code § 89-6-1207; amd. 2009 Code; Ord. 13-03, 2-13-2013; 2009 Code § 8-3C-7, Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-9: INSPECTIONS:**

- A. After all public improvements have been completed, the developer shall request a warranty inspection in writing. The developer shall request a re-inspection, in writing, after completing corrections list items. At the end of the warranty period, the developer shall request a final inspection, in writing. The developer shall request re-inspection, in writing, after completing corrections list items.
- B. Inspections and re-inspections will be performed by the city within fifteen (15) days after receipt by the city engineer of a written request.
- C. After performance of an inspection or re-inspection, the city engineer shall prepare a corrections list identifying incomplete, unsatisfactory and defective items. The developer shall complete the corrections items within forty five (45) days and submit a written request for re-inspection. Failure to complete the corrections list items within forty five (45) days may result in additional re-inspections and preparation of revised corrections lists.
- D. If corrections items are not timely completed or a written request for re-inspection or certificate of completion is not submitted, the following shall apply: 1) the developer shall be responsible for the cost of each additional inspection and preparation of additional corrections lists; 2) for warranty inspections, the public improvements shall not be accepted by the city, the warranty period shall not commence and the developer will remain responsible for all cost and expense of repairing the improvements, including without limitation, administrative costs, labor and materials costs; 3) the developer shall be responsible for all additional deterioration and damage caused by the failure to timely correct defective conditions or request the re-inspection; and 4) the city shall have the right to make demand on the proceeds of the financial assurance or warranty assurance, as applicable, for incomplete, unsatisfactory or defective items.
- E. Upon verification by the city engineer and the city manager that there is no corrections list or the corrections list items have been satisfactorily completed in accordance with the approved engineering drawings and the city ordinances, standards and specifications, and provided that the requirements of this article are met for city acceptance, the city manager will issue a letter of acceptance and allow the plat to be recorded. (2001 Code § 89-6-1207; amd. 2009 Code § 8-3C-7C; Ord. 13-03, 2-13-2013; § 8-3C-8, Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-10: WARRANTY ASSURANCE:**

- A. Prior to plat recordation, developer shall submit or maintain a warranty assurance in the amount set forth in this article. The city manager may approve reduction of an existing public improvement assurance to an amount equal to the warranty assurance amount required by this article. (Ord. 14-\_\_\_\_, 03-12-2014)



### **8-3C-11: FAILURE TO PERFORM:**

If the developer fails to complete the required improvements as set forth in an improvement construction and assurance agreement, within twenty four (24) months from the date of final plat recordation or, if no plat is recorded within twenty four (24) months from the effective date of the improvement construction and assurance agreement, the city engineer will notify the developer, builder or property owner that s/he has forty five (45) calendar days in which to complete the improvements. If the improvements are not completed within the forty five (45) day period, demand may be made on the holder of the financial assurance, and the city may take the necessary corrective action, at the expense of the developer. (2001 Code § 89-6-1207; amd. 2009 Code § 8-3C-7D; Ord. 13-03, 2-13-2013; § 8-3C-9, Ord. 14-\_\_\_, 03-12-2014)

### **8-3C-12: FINAL INSPECTION, RELEASE OF WARRANTY ASSURANCE:**

- A. Release Of Financial Assurance For Nonpublic Improvements: The financial assurance for completion of nonpublic improvements shall be released upon verification that all nonpublic improvements have been installed in accordance with the approved engineering drawings and the city ordinances, standards and specifications. Release shall be evidenced by written approval of the city manager. The public works director may determine to perform an interim inspection of nonpublic improvements and may, upon verification of satisfactory installation of some nonpublic improvements, approve interim reduction of the nonpublic improvement assurance by an amount reasonably determined by the public works director; provided that the public works director has received written request from the developer and has considered the following: 1) the type of nonpublic improvements; 2) the amount of the nonpublic improvement assurance; 3) the difference in nonpublic improvement and public improvement assurance amounts; and 4) other reasonably related information.
- B. Final Inspection Of Public Improvements, Release Of Public Improvement Guarantee:
  - 1. After the warranty period is complete, the developer shall request a final inspection and release of the improvement assurance by submitting a completed application to the city engineer.
  - 2. After performance of the final inspection, the city engineer shall prepare a corrections list identifying defective items, which shall be repaired by developer within forty five (45) calendar days. Upon completion of the corrections list items, a certification of completion shall be submitted to the city engineer. The certification shall be in a form acceptable to the city engineer. Within forty five (45) days after receiving the certification, the city shall re-inspect and accept or reject the public improvements.
  - 3. No release will occur until the city engineer receives a complete application requesting release. Completeness shall be determined by the city engineer, and incomplete applications may be returned to the developer.

4. Upon verification by the city engineer and the city manager that the corrections list items have been satisfactorily completed in accordance with the approved engineering drawings and the city ordinances, standards and specifications, the city manager will approve release of the warranty assurance. Final release shall be evidenced by written approval of the city manager.

- C. Proof of Release: The city shall deliver proof of release to the developer. The developer shall be responsible to ensure that such delivered acknowledgment is received and forwarded to the appropriate parties. (2001 Code § 89-6-1208; amd. Ord. 10-18, 7-28-2010; 2009 Code § 8-3C-8; Ord. 13-03, 2-13-2013; § 8-3C-10, Ord. 14-\_\_\_\_, 03-12-2014)

#### **8-3C-13: REPAIRS AND EMERGENCY REPAIRS:**

If at any time during the construction period for platted projects or warranty period, repairs to any of the public improvements become necessary, the following actions may be taken:

- A. The city manager may require the developer to undertake immediate corrective repairs or other safety measures at any time the improvement is in a defective condition such that, in the opinion of the city manager, public safety or convenience is jeopardized by such defective condition.
- B. Reasonable efforts will be made to have the developer complete emergency repairs or other safety measures. However, if in the exclusive judgment of the city manager, an emergency or hazardous condition exists the city may take immediate action. The city shall not take more action than is reasonably necessary to alleviate the emergency or hazardous situation. Thereafter, upon written demand, the developer shall immediately reimburse the city for all labor, materials or equipment usage expenditures. If reimbursement has not been made within five (5) working days after notification of the amount due, a demand will be made on the holder of the financial assurance for the amount due. (2001 Code § 89-6-1209; 2009 Code § 8-3C-9; amd. Ord. 13-03, 2-13-2013; § 8-3C-11, Ord. 14-\_\_\_\_, 03-12-2014)

#### **8-3C-14: INADEQUATE PROCEEDS; COSTS:**

- A. If the developer, builder or property owner does not timely complete improvements or make repairs, and if the proceeds of the improvement assurance are inadequate, for whatever reason (including previous reductions), to pay the cost of completing and repairing the improvements to meet the city ordinances, standards and specifications, and the approved engineering drawings, the developer, builder or property owner who submitted the improvement assurance shall be responsible to pay to the city the deficiency. Building permits and other city approvals may be denied for the development or property until: 1) the improvements are satisfactorily completed and repaired as verified by the city engineer; or 2) a new, satisfactory improvement assurance for the deficiency has been executed and delivered to the city.
- B. The city's cost of administration incurred in obtaining the proceeds of the improvement assurance, including attorney fees and court costs, if any, shall be recovered by the city from the proceeds of the assurance. (2001 Code § 89-6-1210; 2009 Code § 8-3C-10; amd. Ord. 13-03, 2-13-2013; § 8-3C-12, Ord. 14-\_\_\_\_, 03-12-2014)

**Section 2.** Title 11, Chapter 4, Sections 1 through 3 of the 2009 City Code shall hereafter read as follows:

## **Chapter 4 FINANCIAL SECURITY**

### **11-4-1: REVEGETATION AND RESTORATION AGREEMENT AND FINANCIAL SECURITY:**

#### **11-4-2: FINANCIAL SECURITY FOR REVEGETATION:**

#### **11-4-3: FINANCIAL SECURITY FOR SITE RESTORATION:**

### **11-4-1: REVEGETATION AND RESTORATION AGREEMENT AND FINANCIAL SECURITY:**

Prior to issuance of a land disturbance permit, the applicant and city shall be required to enter into a revegetation and restoration agreement, in a form acceptable to the city, addressing revegetation and restoration requirements and providing financial security to ensure completion of the revegetation and restoration of the site. The applicant shall be required to complete all land disturbance activities, revegetation and restoration in accordance with the terms and conditions of the land disturbance permit, the approved plans, the revegetation and restoration agreement, and all applicable ordinances, resolutions, standards and specifications. (2001 Code § 81-4-010; amd. Ord. 14-\_\_\_, 03-12-2014)

#### **11-4-2: FINANCIAL SECURITY FOR REVEGETATION:**

Prior to issuance of a land disturbance permit for any land disturbance activity, including without limitation a clearing and grubbing limited land disturbance permit, the applicant shall be required to provide financial security to ensure installation and completion of all revegetation required by the land disturbance regulations. The financial security shall be equal to one hundred percent (100%) of the engineer's estimated cost to install and complete the required revegetation. Except as otherwise provided in this section, the financial security shall be administered and processed in accordance with the financial assurance provisions set forth in title 8 of this code. (2001 Code § 81-4-020; amd. Ord. 14-\_\_\_, 03-12-2014)

#### **11-4-3: FINANCIAL SECURITY FOR SITE RESTORATION:**

Prior to issuance of a land disturbance permit, except a clearing and grubbing limited land disturbance permit, the applicant shall be required to provide security to ensure completion of all restoration required by the land disturbance regulations. The financial security shall also include revegetation and shall be equal to ten percent (10%) of the city engineer's estimated cost of installing and constructing the public improvements for which the land disturbance permit is issued. The applicant or city may prepare a site restoration plan addressing, at a minimum, the following items: (a) mass re-grading of the site to restore pre-existing or similar grading and topography; (b) removal of incomplete facilities, such as pipes, asphalt, concrete, landscaping and appurtenances for which future use by others is determined by the city engineer to be unlikely; (c) capping, backfilling, re-grading and other work to protect in place incomplete facilities sufficient to preserve them for future master planned projects; (d) filling and backfilling of trenches and other excavations; (e) removal of hazardous conditions created by land

disturbance activities; (f) surveys, professional consultation and testing made necessary by incomplete land disturbance activities; (g) preparation of as-built drawings; and (h) the estimated cost of each. If a site restoration plan prepared by the applicant or city is approved by the city engineer, the financial security for restoration shall be one hundred percent (100%) of the city engineer's estimated cost of the restoration improvements supported by the site restoration plan plus the cost of revegetation. Except as otherwise provided in this section, the financial security shall be administered and processed in accordance with the financial assurance provisions set forth in title 8 of this code. (2001 Code § 81-4-030; amd. Ord. 14-\_\_\_\_, 03-12-2014)

**Section 3.** Additions or amendments to the 2009 City Code when passed in such form as to indicate the intention of the city council to make the same a part of the 2009 City Code shall be deemed to be incorporated in the 2009 City Code, so that reference to the 2009 City Code hereafter includes the additions and amendments.

**Section 4.** This Ordinance shall become immediately effective.

Passed and adopted by the City Council of the City of West Jordan, Utah this 12<sup>th</sup> day, of March, 2014.

CITY OF WEST JORDAN

By: \_\_\_\_\_  
KIM V. ROLFE  
Mayor

ATTEST:

MELANIE S. BRIGGS, MMC  
City Clerk

**Voting by the City Council**

**Jeff Haaga**  
**Judy Hansen**  
**Chris McConnehey**  
**Chad Nichols**  
**Ben Southworth**  
**Justin D. Stoker**  
**Mayor Kim V. Rolfe**

**"AYE"**

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**CITY CLERK/RECORDER'S CERTIFICATE OF PUBLICATION**

I, Melanie S. Briggs, certify that I am the City Clerk/Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was published in the Legal Section, of the Salt Lake Tribune, on the \_\_\_\_\_ day of \_\_\_\_\_, 2014, pursuant to Utah Code Annotated, 10-3-711.

MELANIE S. BRIGGS, MMC  
City Clerk/Recorder

[SEAL]

# Legislative

## ARTICLE C. IMPROVEMENT GUARANTEES

8-3C-1: PURPOSE AND SCOPE:

8-3C-2: INSTALLATION OF PUBLIC AND NONPUBLIC IMPROVEMENTS  
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8-3C-~~6~~ 7: SYSTEM REDUCTIONS OF FINANCIAL ASSURANCE:

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8-3C-11 13: REPAIRS AND EMERGENCY REPAIRS:

8-3C-12 14: INADEQUATE PROCEEDS; COSTS:

8-3C-1: PURPOSE AND SCOPE:

The purpose and scope of this article is to provide for and govern construction and the form, amount and release of guarantees financial assurance for all public improvements which will be dedicated to the city or be installed in the public right of way, and all private streets, boundary fences, and nonpublic improvements which will be installed as a condition of development. As used in this article, "public improvements" shall mean all improvements which will be dedicated to the city or be installed in the public right of way. (2001 Code § 89-6-1201; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

8-3C-2: INSTALLATION OF PUBLIC AND NONPUBLIC IMPROVEMENTS  
REQUIRED AS A CONDITION OF DEVELOPMENT:

A. Construction Required: Construction of all public improvements required as a condition of development shall be completed pursuant to a land disturbance permit issued under title 11 of the city code prior to plat recordation or building permit issuance. The developer shall warrant the public improvements according to the provisions of this article and provide financial assurance for the warranty. Unless otherwise expressly excepted by this article, no subdivision plat shall be recorded, no lots shall be sold, and no building permits shall be issued until construction of all public improvements is complete and public improvements have been accepted by the city.



- A B. Construction Required: Within Financial Assurance in Lieu of Construction: At the developer's option, the subdivision plat may be recorded prior to construction of public improvements, provided that the city and developer enter into an improvement construction and assurance agreement providing financial assurance. The improvement construction and assurance agreement may authorize construction of public improvements to be completed within twenty four (24) months from after the date of final plat recordation or, if no plat is recorded, within twenty four (24) months from the effective date of the improvement guarantee agreement, the developer, builder or property owner shall complete construction of all public improvements and nonpublic improvements required as a condition of development approval or building permit issuance. The time for completion may be extended by the city council after receiving a recommendation from the planning commission. The developer, builder or property owner shall warrant the public improvements according to the provisions of this article.
- B. Improvement Guarantee Required: The developer, builder or property owner shall enter into an improvement guarantee agreement in a form acceptable to the city, securing the satisfactory completion of all required public and nonpublic improvements and the warranty of all public improvements. The improvement guarantee construction and assurance agreement shall be in a legal form acceptable to the city and approved by the city attorney. No subdivision plat shall be recorded, no lots shall be sold, and no building permits shall be issued until the improvement guarantee agreement has been signed on behalf of the city, securing the satisfactory completion of all required public and nonpublic improvements and the warranty of all public improvements. After the effective date of the improvement construction and assurance agreement, the plat may be recorded and lots may be sold, but no building permits shall be issued until construction of all public improvements is complete and public improvements have been accepted by the city in accordance with this article.
- C. No Third Party Beneficiaries: The guarantee required under this section is improvement construction and assurance agreement and associated financial assurance are for the sole benefit of the city. The guarantee is and not for the individual benefit of any citizen or identifiable class of citizens, including, but not limited to, the purchasers of lots or building spaces within the development for which the improvement guarantee assurance is required. The guarantee improvement assurance is not for the purpose of ensuring that funds are available for the payment to material suppliers or labor suppliers for such improvements, and no rights to such guarantee shall accrue to such suppliers. The fact that such a guarantee the improvement assurance has been required by the city shall not create any city obligation to third parties to: enforce the its terms; of said guarantee or create any right of action against the city to enforce the terms of the guarantee, to install the guaranteed improvements; or to respond in damages for the nonenforcement of the guarantee improvement assurance or the noninstallation of the improvements. (2001 Code § 89-6-1202; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_, 03-12-2014)



### **8-3C-3: ESTIMATED COST OF IMPROVEMENTS:**

- A. Estimated Cost Of Public Improvements, System Categories: ~~The~~ Based on the approved engineering drawings, the city engineer shall calculate the estimated cost of public improvements ~~which will be dedicated to the city or be installed in the public right of way.~~ The estimated cost shall typically include, not by way of limitation, the following system categories:
1. Earthwork and erosion control;
  2. Culinary water;
  3. Sanitary sewer;
  4. Storm sewer;
  5. Street improvements, including, but not limited to, curb, gutter and sidewalk;
  6. Secondary and irrigation water;
  7. Public landscaping;
  - ~~7~~ 8. Finish items related to the public improvements; and
  - ~~8~~ 9. Other categories as approved by the city engineer.
- B. Estimated Cost Of Nonpublic Improvements: Where required, the city engineer shall also calculate the reasonable estimated cost of private streets, boundary fences and other nonpublic improvements to be installed as a condition of development, ~~approval or building permit issuance.~~ (2001 Code § 89-6-1203; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-4: IMPROVEMENT GUARANTEE AMOUNT OF FINANCIAL ASSURANCE:**

- A. ~~Public Improvement Guarantee Amount~~ Improvements Completion Assurance: ~~The~~ If the developer desires to record the subdivision plat prior to city acceptance of all public improvements, the developer, builder or property owner shall submit an improvement guarantee financial assurance in the face amount of one hundred percent (100%) of the estimated cost of public improvements, plus the cost of a one inch (1") asphalt overlay on all public streets based on the approved engineering drawings. The estimated cost of public improvements and amount of the financial assurance will not take into consideration any portion of public improvements constructed prior to plat recordation.



- B. ~~Nonpublic Improvement Guarantee Amount Improvements Completion Assurance:~~ In addition to the public improvement guarantee, the developer, builder or property owner shall submit an improvement guarantee in the face amount of The amount of financial assurance for construction of nonpublic improvements shall be one hundred percent (100%) of the estimated cost of private streets, boundary fences, landscaping, common area and recreational facilities and amenities, and other nonpublic improvements to be installed as a condition of development approval or building permit issuance.
- C. Warranty Assurance: The amount of financial assurance for warranty of public improvements shall be the lesser of the following: ten percent (10%) of the estimated cost of public improvements; or ten percent (10%) of the developer's reasonable proven cost of completion. (2001 Code § 89-6-1204; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_, 03-12-2014)

#### **8-3C-5: FORM OF IMPROVEMENT GUARANTEE FINANCIAL ASSURANCE:**

~~The city shall have immediate access to the proceeds of the improvement guarantee. The guarantee shall be one of accept~~ the following forms of financial assurance:

- A. An escrow account held by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. ~~The proceeds city shall have immediate access to the proceeds, which shall be available to the city by presenting a site draft at an office located within fifty (50) miles of the city.~~
- B. An irrevocable standby letter of credit issued by a federally insured bank, savings and loan, or credit union, authorized to do business in the state, in a form approved by the city attorney. ~~The proceeds city shall have immediate access to the proceeds, which shall be available to the city by presenting a site draft at an office located within fifty (50) miles of the city.~~
- C. Cash or a cashier's check, for deposit with the city in its accounts. Interest, if any, earned by the city on the deposited sum shall be retained by the city as reimbursement and an offset for the cost of administering the improvement ~~guarantee construction and assurance agreement and financial assurance.~~ (2001 Code § 89-6-1205; amd. Ord. 13-03, 2-13-2013; Ord. 14-\_\_\_, 03-12-2014)

#### **8-3C-6: PUBLIC IMPROVEMENT ACCEPTANCE:**

- A. Public Improvement Acceptance: City acceptance of public improvements shall occur only after the city engineer verifies all of the following: (a) all systems are constructed; (b) all corrections list items are complete; (c) all city inspections and re-inspections are complete, except the final inspection to occur at the end of the warranty period; (d) all public improvements are in compliance with city ordinances, standards, specifications and the approved



engineering drawings; (e) a maintenance plan has been submitted to the city for public landscaping improvements; (f) as built drawings have been submitted to the city; (g) the developer has provided financial assurance for the warranty; and (h) the subdivision plat is recorded. Acceptance shall not be deemed to have occurred unless and until the plat has been recorded and the city manager has issued a validly executed letter of acceptance.

B. Timing of City Inspection and Acceptance: After completing all systems, the developer shall submit a written request for the city to perform an inspection of the public improvements. Failure to request city inspections and re-inspections in writing shall delay the city's inspection and potential acceptance. The date of city acceptance shall be the later of: (1) the date on which the plat is recorded; or (2) the date on which the city manager signs the letter of acceptance.

C. Temporary System Connections: Prior to city acceptance of public improvements, the city engineer may authorize temporary connection to the city's existing infrastructure for the purpose of testing and inspecting the public improvements. The connection shall not become permanent unless and until the date of city acceptance as defined in this article. At any time prior to city acceptance, including without limitation any time prior to plat recordation, the city engineer's authorization for temporary connection may be revoked if the city engineer determines that public improvements may not be timely completed or dedicated to the city. (Ord. 14-\_\_\_, 03-12-2014)

#### **8-3C-6 7: SYSTEM REDUCTIONS OF FINANCIAL ASSURANCE:**

A. Applicability: This section shall only apply to public improvements that are subject to a public improvement construction and assurance agreement.

A B. System Reduction Request: ~~After~~ For public improvements that are subject to a public improvement construction and assurance agreement, the developer may submit system inspection and reduction requests no more frequently than once every thirty (30) calendar days after completing a system or systems, the developer, builder or property owner who submitted the guarantee, may submit a written request for reduction of the public improvement guarantee. Written reduction requests may be made only once every thirty (30) calendar days. One interim reduction may be requested for the public landscaping system if the public landscaping improvements are substantially complete and seasonal conditions prevent total completion, testing and inspection.



B C. Reduction Requirements and Amount:

1. ~~The proceeds of the public improvement guarantee shall~~ Except as otherwise allowed by this article for public landscaping improvements, the financial assurance may only be reduced upon satisfactory completion of an entire system, as determined by the city engineer. The amount of the reduction shall be determined by the city engineer and shall not exceed seventy five percent (75%) of the amount set forth in the estimated cost of public improvements for the system category in which reduction is sought. The total public improvement guarantee proceeds shall not be reduced below twenty five percent (25%) of the initial face amount, plus the estimated cost of a one inch (1") thick asphalt concrete overlay for public streets ninety percent (90%) of the initial assurance amount for the completed system.

2. If seasonal weather conditions prevent the public landscaping improvements from being completed, tested and inspected, the financial assurance may be reduced upon substantial completion of the public landscaping system, as determined by the city engineer. To the extent reasonable practical, the completed portion of the public landscaping improvements must be inspected by the city and found by the city engineer to be in full compliance with city ordinances, standards and specifications, and the approved engineering drawings. The amount of the interim landscaping reduction shall be determined by the city engineer and shall not exceed seventy five percent (75%) of the initial assurance amount for the public landscaping system.

~~2 3.~~ No system reduction shall be authorized until such time as the city engineer has inspected the improvements and found them to be in full compliance with city ordinances, standards and specifications, and the approved engineering drawings. All reductions shall be by written authorization of the city engineer.

4. A system reduction shall not constitute city acceptance of any system or any portion of the public improvements. City acceptance shall only be by the letter of acceptance issued in accordance with this article. The warranty period will not commence until after city acceptance.

~~C.~~ Public Landscaping Improvements And Nonpublic Improvements: System reductions shall not be available for completion of public landscaping improvements or nonpublic improvements. (2001 Code § 89-6-1206; amd. Ord. 13-03, 2-13-2013; 2009 Code § 8-3C-6, Ord. 14-\_\_\_\_, 03-12-2014)



**8-3C-78: WARRANTY, MAINTENANCE, REPAIR AND INDEMNIFICATION FOR PUBLIC IMPROVEMENTS:**

A. Indemnification: ~~The A developer, builder or property owner who submits the guarantee, who enters into an improvement construction and assurance agreement, shall agree to indemnify, defend and hold the city harmless from any and all liability that may arise as a result of the public improvements until the city's final acceptance of the public improvements.~~

B. ~~Warranty And Maintenance~~ Period, Repairs And Maintenance; ~~Issuance Of Building Permit:~~

1. ~~The warranty and maintenance period shall be a minimum of twelve (12) months.~~

2. ~~The warranty and maintenance period may be up to twenty four (24) months longer if the city:~~

a. ~~Determines for good cause that a lesser one-year period would be inadequate to protect the public health, safety and welfare; and~~

b. ~~Has substantial evidence of on record:~~

(1) ~~Prior Of prior~~ poor performance of the applicant; ~~or~~

(2) ~~Unstable soil conditions within the subdivision or development area; or That the area upon which the infrastructure will be constructed contains suspect soil and the municipality has not otherwise required the applicant to mitigate the suspect soil.~~

(3) ~~Extreme fluctuations in climatic conditions that would render impractical the discovery of substandard or defective performance within a one-year period.~~

3. ~~For public landscaping improvements, the warranty and maintenance period shall be twenty four (24) months. The city council has determined that a lesser period would be inadequate due to the inability of the city to discover substandard or defective landscaping materials until such materials are exposed to at least two (2) seasons of changing climatic conditions.~~

4 3. ~~The warranty and maintenance period shall will begin on the date specified in writing by the city manager, or if not so specified, the date on which the city manager executes the written authorization for the warranty and maintenance period reduction described in this section of city acceptance as defined in this article.~~



~~5 4.~~ During the warranty and maintenance period, ~~the developer, builder or property owner shall guarantee all~~ unconditionally warrant that the public improvements installed against damage arising from any defect in materials, design or construction and shall promptly repair the same upon written notice from the city comply with the city's written standards for design, materials and workmanship and will not fail in any material respect as a result of poor workmanship or materials.

~~6 5.~~ During the warranty and maintenance period, the city will only provide street sweeping and snowplowing. All other maintenance will be by the developer, builder or property owner until the city's final acceptance of the public improvements. Prior to commencing the warranty period, the developer shall submit to the city a maintenance plan for public landscaping. During the warranty period, the city shall provide maintenance of accepted public improvements and follow the public landscaping maintenance plan. Landscaping failure within the warranty period shall be presumed to be due to defective materials or workmanship if the city certifies that the city, or its contractor, substantially followed the maintenance plan.

~~7.~~ No building permit shall be issued for construction within a development or subdivision until the day after the warranty and maintenance period begins, unless the developer, builder or property owner agrees to perform the following:

a. ~~Roadway, sanitary sewer and storm drainage system cleaning where individual lot building, site construction or other activities result in mud or dirt in the streets and storm drainage systems;~~

b. ~~Minimization and cleaning of tracked mud and dirt consistent with federal, state and local laws, ordinances and regulations; and~~

c. ~~Maintenance and repair of damage to public improvements arising from any cause related to or located within the boundaries or construction area of the development for which the improvement guarantee was submitted.~~

~~8 6.~~ Regardless of cause, repair work shall be the responsibility of the developer until the date on which the warranty and maintenance period begins.

~~9 7.~~ The warranty provisions of this chapter shall not apply to nonpublic improvements.

C. Issuance of Building Permits. Except as specifically set forth by written agreement entered into prior to issuance, no building permit shall be issued for construction within a development or subdivision until the day after the date of city acceptance as defined in this article. (2001 Code § 89-6-1207; amd. 2009 Code; Ord. 13-03, 2-13-2013; 2009 Code § 8-3C-7, Ord. 14-\_\_\_, 03-12-2014)



### **8-3C-8 9: WARRANTY INSPECTIONS AND GUARANTEE REDUCTION:**

- A. After all public improvements have been completed, the developer, ~~builder or property owner~~ shall request, a warranty inspection in writing, ~~a warranty inspection and guarantee reduction~~. ~~The amount of the guarantee reduction shall be determined by the city manager and shall not exceed ninety percent (90%) of the initial face amount of the public improvement guarantee plus the cost of a one inch (1") asphalt concrete overlay for public streets. The warranty reduction shall be evidenced by the written authorization of the city manager. The developer shall request a re-inspection, in writing, after completing corrections list items. At the end of the warranty period, the developer shall request a final inspection, in writing. The developer shall request re-inspection, in writing, after completing corrections list items.~~
- B. ~~The warranty inspection or reinspection of corrections list items~~ Inspections and re-inspections will be performed by the city within fifteen (15) days after receipt by the city engineer of a written request.
- C. After performance of ~~the warranty an~~ an inspection or re-inspection, the city engineer shall prepare a corrections list identifying incomplete, ~~and unsatisfactory and defective~~ items. The developer, ~~builder or property owner~~ shall complete the corrections items within forty five (45) days and submit a written request for ~~reinspection~~ re-inspection. Failure to complete the corrections list items within forty five (45) days ~~shall may~~ result in reinspection additional re-inspections and preparation of a revised corrections lists.
- D. If corrections items are not timely completed or a written request for ~~reinspection~~ re-inspection or certificate of completion is not submitted, the following shall apply: 1) the developer, ~~builder or property owner~~ shall be responsible for the cost of each additional inspection and preparation of additional corrections lists; 2) for warranty inspections, the public improvements shall not be accepted by the city, the warranty and maintenance period shall not commence and the developer will remain responsible for all cost and expense of repairing the improvements, including without limitation, administrative costs, labor and materials costs; 3) the developer, ~~builder or property owner~~ shall be responsible for all additional ~~defects~~, deterioration and damage caused by the failure to timely ~~complete the corrections list~~ correct defective conditions or request the ~~reinspection~~ re-inspection; and 4) the city shall have the right to make demand on the proceeds of the ~~improvement guarantee~~ financial assurance or warranty assurance, as applicable, for incomplete, unsatisfactory or defective items.
- E. Upon verification by the city engineer and the city manager that there is no corrections list or the corrections list items have been satisfactorily completed in accordance with the approved engineering drawings and the city ordinances, standards and specifications, and provided that the requirements of this article are met for city acceptance, the city manager will approve reduction of the public improvement guarantee to an amount equal to ten percent (10%) of its original face amount, plus the estimated cost of a one inch (1") thick asphalt concrete overlay for the roadways, and the public improvements will be deemed accepted



by the city, subject to the applicable warranty issue a letter of acceptance and allow the plat to be recorded. (2001 Code § 89-6-1207; amd. 2009 Code § 8-3C-7C; Ord. 13-03, 2-13-2013; § 8-3C-8, Ord. 14-\_\_\_\_, 03-12-2014)

#### **8-3C-10: WARRANTY ASSURANCE:**

- A. Prior to plat recordation, developer shall submit or maintain a warranty assurance in the amount set forth in this article. The city manager may approve reduction of an existing public improvement assurance to an amount equal to the warranty assurance amount required by this article. (Ord. 14-\_\_\_\_, 03-12-2014)

#### **8-3C-9 11: FAILURE TO PERFORM:**

If the developer, ~~builder or property owner~~ fails to complete the required improvements as set forth in an improvement construction and assurance agreement, within twenty four (24) months from the date of final plat recordation or, if no plat is recorded within twenty four (24) months from the effective date of the improvement guarantee construction and assurance agreement, the city engineer will notify the developer, builder or property owner that s/he has forty five (45) calendar days in which to complete ~~these requirements~~ the improvements. If the requirements improvements are not completed within the forty five (45) day period, demand may be made on the holder of the guarantee financial assurance, and the city may take the necessary corrective action, at the expense of the developer, ~~builder or property owner who submitted the improvement guarantee~~. (2001 Code § 89-6-1207; amd. 2009 Code § 8-3C-7D; Ord. 13-03, 2-13-2013; § 8-3C-9, Ord. 14-\_\_\_\_, 03-12-2014)

#### **8-3C-10 12: FINAL INSPECTION, FINAL ACCEPTANCE AND RELEASE OF GUARANTEE WARRANTY ASSURANCE:**

- A. Release Of Guarantee Financial Assurance For Nonpublic Improvements: The guarantee financial assurance for completion of nonpublic improvements shall be released upon verification that all nonpublic improvements have been satisfactorily installed in accordance with the approved engineering drawings and the city ordinances, standards and specifications. Release shall be evidenced by written approval of the city manager. The public works director may determine to perform an interim inspection of nonpublic improvements and may, upon verification of satisfactory installation of some nonpublic improvements, approve interim reduction of the nonpublic improvement guarantee assurance by an amount reasonably determined by the public works director; provided that the public works director has received written request from the developer, ~~builder or property owner who submitted the nonpublic improvement guarantee~~ and has considered the following: 1) the type of nonpublic improvements; 2) the amount of the nonpublic improvement guarantee assurance; 3) the difference in nonpublic improvement and public improvement guarantee assurance amounts; and 4) other reasonably related information.
- B. Final Inspection Of Public Improvements, Release Of Public Improvement Guarantee:



1. After the warranty and maintenance period is complete, the city shall perform developer shall request a final inspection, and the developer, builder or property owner who submitted the improvement guarantee shall request and release of the improvement guarantee assurance by submitting a completed application to the city engineer.

2. After performance of the final inspection, the city engineer shall prepare a corrections list identifying unsatisfactory defective items, which shall be repaired by developer, builder or property owner within forty five (45) calendar days. Upon completion of the corrections list items, a certification of completion shall be submitted to the city engineer. The certification shall be in a form acceptable to the city engineer. Within forty five (45) days after receiving the certification, the city shall reinspect re-inspect and accept or reject the public improvements.

3. Failure to complete the corrections list items and submit the certification within forty five (45) calendar days shall constitute a failure to perform. In addition, the following shall apply: a) the city may reinspect and prepare a revised corrections list; b) the developer, builder or property owner shall be responsible for the cost of each additional inspection and corrections list; c) the improvements shall not be finally accepted by the city until the corrections list is complete and the warranty and maintenance period shall continue; d) the developer, builder or property owner shall be responsible for all additional defects, deterioration and damage caused by the failure to timely complete the corrections list or submit the certification; and e) the city shall have the right to make demand on the proceeds of the improvement guarantee. The developer, builder or property owner will remain responsible for all cost and expense of repairing the improvements, including, not by way of limitation, administrative costs, and labor and material costs.

4 3. No release will occur until the city engineer receives a complete application requesting release. Completeness shall be determined by the city engineer, and incomplete applications shall may be returned to the developer.

5 4. Upon verification by the city engineer and the city manager that the corrections list items have been satisfactorily completed in accordance with the approved engineering drawings and the city ordinances, standards and specifications, the city manager will approve release of the public improvement guarantee warranty assurance. Final release shall be evidenced by written approval of the city manager.

C. Final Acceptance: Final acceptance occurs after the engineering department has completed the final inspection at the end of the warranty and maintenance period, the correction list has been completed, and the final ten percent (10%) retention has been released, in writing, by the city manager. Final acceptance is effective only after delivery of a written acknowledgment signed by the city manager. Delivery may be in person or by depositing such written acknowledgment in the U.S. mail. Verbal acknowledgment of completion does not constitute final acceptance. The developer shall be responsible to ensure that such delivered acknowledgment is received. Upon final acceptance, the city accepts full responsibility for all publicly dedicated facilities. Proof of Release: The city shall deliver proof of release to the developer. The developer shall be



responsible to ensure that such delivered acknowledgment is received and forwarded to the appropriate parties. (2001 Code § 89-6-1208; amd. Ord. 10-18, 7-28-2010; 2009 Code § 8-3C-8; Ord. 13-03, 2-13-2013; § 8-3C-10, Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-11 13: REPAIRS AND EMERGENCY REPAIRS:**

If at any time during the construction period for platted projects or warranty and maintenance period, and, if the development is a subdivision, at any time after plat recordation and prior to final acceptance as set forth herein, repairs to any of the public improvements become necessary, the following actions may be taken:

- A. The city manager may require the developer, builder or property owner to undertake immediate corrective repairs or other safety measures at any time the improvement is in a defective condition such that, in the opinion of the city manager, public safety or convenience is jeopardized by such defective condition.
- B. Reasonable efforts will be made to have the developer, builder or property owner complete emergency repairs or other safety measures. However, if in the exclusive judgment of the city manager, an emergency or hazardous condition exists and, in the exclusive judgment of the city manager or his/her designee, is such that the city must make immediate repairs, only as much work will be finished as the city may take immediate action. The city shall not take more action than is reasonably necessary to alleviate the emergency or hazardous situation. Thereafter, upon written demand, the developer, builder or property owner shall immediately reimburse the city for all labor, materials or equipment usage expenditures. If reimbursement has not been made within five (5) working days after notification of the amount due, a demand will be made on the holder of the guarantee financial assurance for the amount due. (2001 Code § 89-6-1209; 2009 Code § 8-3C-9; amd. Ord. 13-03, 2-13-2013; § 8-3C-11, Ord. 14-\_\_\_\_, 03-12-2014)

### **8-3C-12 14: INADEQUATE PROCEEDS; COSTS:**

- A. If the developer, builder or property owner does not timely complete improvements or make repairs, and if the proceeds of the improvement guarantee assurance are inadequate, for whatever reason (including previous reductions), to pay the cost of completing and repairing the improvements to meet the city ordinances, standards and specifications, and the approved engineering drawings, the developer, builder or property owner who submitted the improvement guarantee assurance shall be responsible to pay to the city the deficiency. Building permits and other city approvals may be denied for the development or property until: 1) the improvements are satisfactorily completed and repaired as verified by the city engineer; or 2) a new, satisfactory improvement guarantee assurance for the deficiency has been executed and delivered to the city.
- B. The city's cost of administration incurred in obtaining the proceeds of the improvement guarantee assurance, including attorney fees and court costs, if any, shall be recovered by the city from the proceeds of the guarantee



assurance. (2001 Code § 89-6-1210; 2009 Code § 8-3C-10; amd. Ord. 13-03, 2-13-2013; § 8-3C-12, Ord. 14-\_\_\_\_, 03-12-2014)

## Chapter 4 **BONDS FINANCIAL SECURITY**

### **11-4-1: LAND DISTURBANCE ACTIVITIES AND IMPROVEMENTS BOND: REVEGETATION AND RESTORATION AGREEMENT AND FINANCIAL SECURITY:**

### **11-4-2: FINANCIAL SECURITY FOR REVEGETATION BOND:**

### **11-4-3: FINANCIAL SECURITY FOR SITE RESTORATION BOND:**

### **11-4-1: LAND DISTURBANCE ACTIVITIES AND IMPROVEMENTS BOND REVEGETATION AND RESTORATION AGREEMENT AND FINANCIAL SECURITY:**

Prior to issuance of a land disturbance permit, the applicant and city shall be required to enter into a bond revegetation and restoration agreement, in a form acceptable to the city, providing security to ensure completion of the land disturbance activities and improvements required to be installed and/or provided pursuant to the provisions of this title and the land disturbance permit addressing revegetation and restoration requirements and providing financial security to ensure completion of the revegetation and restoration of the site. The applicant shall be required to complete all land disturbance activities and improvements, revegetation and restoration in accordance with the terms and conditions of the land disturbance permit, the approved plans, the bond revegetation and restoration agreement, and all applicable ordinances, resolutions, standards, and specifications and plans. The bond shall be equal to one hundred percent (100%) of the engineer's estimated cost, and approved by the city engineer, of the land disturbance activities and improvements to be installed and/or provided. Except as otherwise provided in this section, the bond shall be administered and processed in accordance with the bond provisions set forth in the city subdivision ordinance regarding bonds and security for subdivision public improvements. (2001 Code § 81-4-010; amd. Ord. 14-\_\_\_\_, 03-12-2014)

### **11-4-2: FINANCIAL SECURITY FOR REVEGETATION BOND:**

Prior to issuance of a land disturbance permit for any land disturbance activity, including without limitation a clearing and grubbing limited land disturbance permit, the applicant shall be required to enter into a revegetation bond agreement in a form acceptable to the city providing security to ensure installation and completion of revegetation improvements required to be installed and/or provided pursuant to the provisions of this title and the land disturbance permit. The applicant shall be required to install and complete all revegetation improvements in accordance with the terms and conditions of the land disturbance permit, the bond agreement, and all applicable ordinances, resolutions, standards, specifications and plans provide financial security to ensure installation and completion of all revegetation required by the land disturbance regulations. The bond financial security shall be equal to one hundred percent (100%)



of the engineer's estimated cost, and approved by the city engineer, of to install and complete the required revegetation improvements required to be installed and/or provided. Except as otherwise provided in this section, the revegetation bond financial security shall be administered and processed in accordance with the bond financial assurance provisions set forth in the city subdivision ordinance regarding bonds and security for subdivision public improvements title 8 of this code. (2001 Code § 81-4-020; amd. Ord. 14-\_\_\_, 03-12-2014)

#### **11-4-3: FINANCIAL SECURITY FOR SITE RESTORATION BOND:**

Prior to issuance of a land disturbance permit, except a clearing and grubbing limited land disturbance permit, the applicant shall be required to enter into a restoration bond agreement, in a form acceptable to the city, providing provide security to ensure installation and completion of all restoration improvements required to be installed and/or provided pursuant to the provisions of this title and by the land disturbance permit regulations. The financial security shall also include revegetation and shall be equal to ten percent (10%) of the city engineer's estimated cost of installing and constructing the public improvements for which the land disturbance permit is issued. The applicant shall be required to install and complete all restoration improvements in accordance with the terms and conditions of the land disturbance permit, the bond agreement, and all applicable ordinances, resolutions, standards, specifications and plans. The bond shall be equal to one hundred percent (100%) of the engineer's estimated cost, and approved by the city engineer, of the restoration improvements required to be installed and/or provided. Except as otherwise provided in this section, the restoration bond shall be administered and processed in accordance with the bond provisions set forth in the city subdivision ordinance regarding bonds and security for subdivision public improvements. or city may prepare a site restoration plan addressing, at a minimum, the following items: (a) mass re-grading of the site to restore pre-existing or similar grading and topography; (b) removal of incomplete facilities, such as pipes, asphalt, concrete, landscaping and appurtenances for which future use by others is determined by the city engineer to be unlikely; (c) capping, backfilling, re-grading and other work to protect in place incomplete facilities sufficient to preserve them for future master planned projects; (d) filling and backfilling of trenches and other excavations; (e) removal of hazardous conditions created by land disturbance activities; (f) surveys, professional consultation and testing made necessary by incomplete land disturbance activities; (g) preparation of as-built drawings; and (h) the estimated cost of each. If a site restoration plan prepared by the applicant or city is approved by the city engineer, the financial security for restoration shall be one hundred percent (100%) of the city engineer's estimated cost of the restoration improvements supported by the site restoration plan plus the cost of revegetation. Except as otherwise provided in this section, the financial security shall be administered and processed in accordance with the financial assurance provisions set forth in title 8 of this code. (2001 Code § 81-4-030; amd. Ord. 14-\_\_\_, 03-12-2014)